IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Water's Edge at Wind Gap, LLC, Appellant	:	
v.	:	No. 279 C.D. 2024
Zoning Hearing Board of Moore Township and Moore Township	:	Submitted: July 24, 2026[1]

BEFORE: HONORABLE ANNE E. COVEY, Judge
HONORABLE MATTHEW S. WOLF, Judge
HONORABLE BONNIE BRIGANCE LEADBETTER, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY
JUDGE WOLF FILED: November 16, 2026

This matter returns to the Court following a second remand to the Moore Township (Township) Zoning Hearing Board (Board). Water's Edge at Wind Gap, LLC (Applicant) appeals from the March 4, 2024 order of the Northampton County Court of Common Pleas (Common Pleas), which affirmed the March 17, 2023 decision of the Board that denied Applicant's appeal from

[1] This Court has filed two opinions in this matter previously. We first remanded the matter to the Court of Common Pleas of Northampton County (Common Pleas), retaining jurisdiction, for a timeliness determination. *Water's Edge at Wind Gap, LLC v. Zoning Hr'g Bd. of Moore Twp.*, (Pa. Cmwlth., No. 279 C.D. 2024, filed May 13, 2025), 2025 WL 1378370 (*Water's Edge I*). Thereafter, concluding we have jurisdiction, this Court reversed in part and affirmed in part the March 4, 2024 order of Common Pleas and remanded for further factfinding by the Zoning Hearing Board of Moore Township (Board), again retaining jurisdiction. *Water's Edge at Wind Gap, LLC v. Zoning Hr'g Bd. of Moore Twp.*, (Pa. Cmwlth., No. 279 C.D. 2024, filed Dec. 31, 2025), 2025 WL 3773470 (*Water's Edge II*). The Board has acted on remand, Common Pleas has returned the record to us, and the parties have filed supplemental briefs addressing the Board's new findings.

determinations of the Township's Zoning Officer (Zoning Officer). In *Water's Edge II*,[2] we disposed of all issues Applicant presented on appeal except one: whether the Board erred in denying Applicant's request for a dimensional variance from the Township's Zoning Ordinance, based on the character of the neighborhood/public welfare factor for variance relief. We remanded for additional credibility determinations, findings, and explanation by the Board on the character-of-the-neighborhood issue. After careful review of the Board's additional findings and the parties' supplemental briefs, the Court concludes the Board did not err in denying the variance based on that issue. Accordingly, we affirm Common Pleas's March 4, 2024 order affirming the Board's denial of the variance.

The procedural history of this matter is set forth in our Memorandum Opinion in *Water's Edge II*. *See* slip op. at 2-8. Briefly, Applicant seeks to redevelop its 51-acre property, currently a golf course, into an industrial development with two warehouses. In 2023, after hearings, the Board denied Applicant's preliminary land development application, as amended. Applicant appealed to Common Pleas, which affirmed the Board's denial of the application on three grounds: (1) The application failed to satisfy the applicable steep slope provision of the Zoning Ordinance; (2) The Zoning Ordinance lawfully requires Applicant to construct traffic improvements to Jones Road, which the application did not provide; and (3) Applicant is not entitled to the dimensional variance sought in the application from the Zoning Ordinance's woodland preservation requirement. The dimensional variance relief Applicant requested was to preserve only 55% of the existing woodlands on the property, a 5% reduction from the 60% rate of preservation the Zoning Ordinance requires. The Board found Applicant failed to

[2] Senior Judge Leadbetter noted her dissent from the Court's decision in *Water's Edge II*.

show unnecessary hardship to support that variance.

Applicant appealed. We affirmed the Board's application of the steep slope requirement and reversed the Board's requirement for improvements to Jones Road. *Water's Edge II*, slip op. at 27-28. We also determined, however, that the Board erred in analyzing the variance request. We found Applicant showed unnecessary hardship because the woodland preservation requirement conflicts with another provision of the Zoning Ordinance, such that both cannot be satisfied on this particular property without a variance. We concluded Applicant had not created the hardship and was not requesting a greater variance than is necessary. Thus, the bulk of the variance criteria appeared satisfied. But we noted the Board did not address whether the dimensional variance would alter the character of the neighborhood or be contrary to the public interest. We remanded for the Board to make that determination on the present record so this Court could effectively review every basis on which the Board denied variance relief.

On remand, the Board made the following relevant findings:

> 8. . . . . [T]he Board finds that the specific five percent (5%) variance requested would alter the essential character of the neighborhood in which the property is located or permanently impair the development of adjacent property.
>
> 9. The total woodland area on the [s]ubject [p]roperty is 4.18 acres as set forth in Applicant's Natural Resource Exhibit-Woodlands dated August 2, 2021, and identified in the Zoning Hearing Board record as Exhibit A-13.
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> 10. [Applicant] is proposing to disturb a total of approximately forty-five percent (45%) or 1.88 acres of the woodland area.
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> 11. The requested five percent (5%) variance accounts for approximately 0.21 acres of additional woodland disturbance.

> 12. The woodland area on the [s]ubject [p]roperty is comprised of large mature trees in existence for centuries that provide a tall visual buffer for neighboring properties.
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> 13. The neighborhood surrounding the [s]ubject [p]roperty, especially in the area along Jones Road, is almost entirely residential with primarily single family homes.
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> 14. Recent development in the area has been limited to single-family home subdivisions. Many of the single-family homes are quite large with new landscaping and lack of natural visual buffers.
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> 15. Aside from the existing woodland on the [s]ubject [p]roperty that provides significant visual buffering for the neighboring homes, there is very little other buffering offered in the area.
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> 16. The Board finds that the 0.21 acres of additional woodland disturbance would drastically change the characteristics of the neighborhood by removing large, mature trees that provide an essential visual buffer and privacy for the neighboring properties.
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> 17. The Board also finds that the removal of the additional 0.21 acres of large, mature trees would impair the ability to develop or use the adjoining properties as single-family home[s] due to the additional removal of the large, mature trees that provides the essential visual buffer.

Original Record (O.R.), Item No. 34, Findings of Fact (F.F.) Nos. 8-17. This Court ordered, and the parties filed, supplemental briefs addressing the Board's findings on remand.

Section 910.2(a) of the Municipalities Planning Code (MPC)[3] requires an applicant for a variance to show, *inter alia*,

[3] Act of July 31, 1968, P.L. 805, added by the Act of Dec. 21, 1988, P.L. 1329, 53 P.S. § 10910.2(a).

> (4) [t]hat the variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare.

53 P.S. § 10910.2(a)(4). The party seeking the variance bears the burden of proving the variance is consistent with this public interest factor. *Valley View Civic Ass'n v. Zoning Bd. of Adjustment*, 462 A.2d 637, 640 (Pa. 1983). The Board is the ultimate arbiter of credibility and weight of the evidence. *Liberties Lofts, LLC v. Zoning Bd. of Adjustment*, 182 A.3d 513, 529 (Pa. Cmwlth. 2018). When we review the Board's findings, it is irrelevant whether the record would support findings other than those the Board made; rather, the critical inquiry is whether there is evidence to support the findings actually made. *Id.*

Applicant argues the Board's findings are not supported by evidence and they conflict with the evidence Applicant presented. Applicant contends some facts the Board recites—residential development near the property, the quality of existing visual buffers, and the age and size of the woodlands on the property—are not supported in the record. Applicant emphasizes the evidence it presented, such as imagery showing large trees on adjoining properties, and the testimony of Stephen Walsh, P.E., Applicant's engineer, that the planned development would actually improve the landscape screening on the property. Applicant argues the property is within an industrial zone, so industrial development will not alter the character of the area.

The Township points out evidence of record supporting the Board's findings. Applicant's natural resources plan and accompanying aerial photographs show the woodlands are located along the border of the property at Jones Road, facing what appear to be some single-family homes with large lots. Reproduced

Record (R.R.) at 186a-87a. Applicant's overall site plan notes the need for "residential" screening and a "residential side" of the berm to be built in that part of the property. *Id.* at 127a. The Township argues the Board chose not to credit Walsh's testimony that 55% woodland preservation was adequate. The Township also claims the Board's decision on this variance factor matches up with the express purpose of the woodland protection provision, which is to "protect and preserve the environment and character of the Township through the preservation of natural resources, including but not limited to . . . woodlands." Section 300-35(A)(l) of the Zoning Ordinance.

The Board argues Applicant is asking this Court to substitute its view of the evidence for the Board's, and it claims the findings on remand are supported by the record. The Board, like the Township, points out Applicant's own plans show the woodlands are located along the border between the property and residential properties. The Board argues a 5% deviation from the preservation requirement will inhibit the use of those woodlands for visual screening, privacy, and to preserve the rural/residential character of that part of the property and its surroundings.

We agree with the Township and Board that the Board's findings on this variance factor are supported by substantial evidence. In addition to Applicant's plans discussed above, which show the woodlands provide screening for adjacent residential lots, Applicant's documentary submissions and Walsh's testimony confirm residential, single-family properties are located near the wooded portion of the property. *See* R.R. at 217a, 379a, 447a, 524a. Walsh testified the existing trees are at least 40 to 50 feet tall and provide a visual screen between the warehouse and adjoining properties. *Id.* at 406a-07a. As much as Walsh may also have testified that the requested variance would allow sufficient screening, *see* Applicant's Supp'l

Br. filed July 25, 2026, at 10-13, the Board was not obligated to credit that testimony and it apparently did not do so. We conclude the Board's finding that removing an additional 5% of the woodlands on the property would adversely affect the character of the neighborhood, and would impair the privacy and use of nearby residential properties, is supported by substantial evidence. Applicant's failure to satisfy each variance factor in the MPC required the Board to deny the variance request.

Accordingly, with these adequate findings and explanation, the Board did not err or abuse its discretion in denying the requested variance, and we will affirm Common Pleas' order affirming that determination.

MATTHEW S. WOLF, Judge

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O R D E R

AND NOW, this 16th day of November 2026, the portion of the March 4, 2024 order of the Court of Common Pleas of Northampton County affirming the Zoning Hearing Board of Moore Township's denial of Water's Edge at Wind Gap, LLC's request for a dimensional variance is AFFIRMED consistent with the foregoing opinion.

MATTHEW S. WOLF, Judge